AUSTRAL AMALGAMATED TIN BHD

v.

ABDUL WAHAB KOPON & ORS & ANOR APPEAL

COURT OF APPEAL, KUALA LUMPUR
MOKHTAR SIDIN JCA
MOHD GHAZALI YUSOFF JCA
NIK HASHIM JCA
[CIVIL APPEAL NO: A-02-478-99]
4 MARCH 2004
[2004] CLJ JT(1)

CIVIL PROCEDURE: *Appeal - Appeal to High Court - From decision of labour officer - Whether appeal is as of right irrespective of amount in dispute or value of subject matter - Employment Act 1955, s. 77(1) - Whether right of appeal subject to s. 28(1) Courts of Judicature Act 1964 - Whether labour office a subordinate or inferior court - Whether labour office a court at all - Whether inquiry conducted by labour officer amounts to judicial proceedings*

LABOUR LAW: *Labour office - Appeal - Appeal from decision of labour officer to High Court - Whether appeal is as of right irrespective of amount in dispute or value of subject matter - Employment Act 1955, s. 77(1) - Whether right of appeal subject to s. 28(1) Courts of Judicature Act 1964 - Whether labour office a subordinate or inferior court - Whether labour office a court at all - Whether inquiry conducted by labour officer amounts to judicial proceedings*

CONSTITUTIONAL LAW: *Courts - Subordinate court - Labour office, whether a subordinate or inferior court - Whether a court at all - Whether 'labour court' exists under the law - Appeals from labour office to High Court, whether subject to s. 28(1) Courts of Judicature Act 1964 - Subordinate Courts Act 1948, s. 3(2) - Courts of Judicature Act 1964, s. 3*

Having been retrenched by the appellant/company, the 208 respondents/workers herein filed a complaint with the labour office which, upon hearing their complaint, ordered the company to pay them RM123,800.82 all together. (Individually, however, none of the workers was awarded more than RM10,000.) Aggrieved, the company appealed to the High Court. The workers then filed an originating motion to strike out the appeal on the ground that the amount in dispute or the value of the subject matter was less than ten thousand Ringgit and there was no question of law involved – regard being had to s. 28(1) of

the Courts of Judicature Act 1964 ('the CJA'). The High Court struck out the company's appeal and the company appealed to the Court of Appeal. The issues that fell for determination before the justices of appeal were: (i) whether, pursuant to s. 77(1) of the Employment Act 1955 ('the EA'), an appeal lies, as of right, from the decision of a labour officer to the High Court, irrespective of the amount in dispute or the value of the subject matter; and (ii) whether the 'labour office' is a subordinate court within the meaning of s. 28(1) of the CJA.

Held (allowing the appeal)
Per Nik Hashim JCA delivering the judgment of the court:

[1] Any affected party who is dissatisfied with the decision of a labour officer has a right of appeal to the High Court **irrespective** of the amount in dispute or the value of the subject matter. That this is so is manifestly clear from the words of s. 77(1) of the EA. (p 319 f-h)

[2] The 'labour office' is **not** a subordinate court or an inferior court within the contemplation of s. 28(1) of the CJA. Only the Sessions Courts, the Magistrates' Courts and the Penghulu's Courts are defined as subordinate courts under s. 3(2) of the Subordinate Courts Act 1948. Consequently, appeals from the 'labour office' to the High Court are **not** caught by the restrictions embodied in s. 28(1) of the CJA. (p 320 a-d)

[3] It would be erroneous to classify the 'labour office' as a 'labour court'. The 'labour office' is **not** a court. Indeed, there is no provision for a 'labour court' in the EA, and the inquiry conducted by the labour officer pursuant to s. 69 of the EA does not amount to judicial proceedings. (p 320 e-f)

[Case remitted to High Court for decision on the merits.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Setelah diberhentikan kerja oleh perayu/syarikat, 208 responden/pekerja di sini telah memfailkan aduan di Pejabat Buruh yang, setelah mendengar aduan, memerintahkan syarikat membayar kepada mereka sejumlah RM123,800.82. (Walaupun begitu, secara individu, tidak seorang pun dari mereka menerima lebih dari RM10,000). Terkilan, syarikat merayu kepada Mahkamah Tinggi. Pekerja kemudian memfail satu usul pemula bagi mengetepikan rayuan atas alasan bahawa jumlah yang dipertikaikan atau nilai halperkara adalah kurang dari sepuluh ribu ringgit dan tiada persoalan undang-undang berbangkit – mengambilkira s. 28(1) Akta Mahkamah Kehakiman 1964 ('AMK'). Mahkamah Tinggi menolak rayuan syarikat dan syarikat merayu ke Mahkamah Rayuan.

Isu yang berbangkit untuk keputusan hakim-hakim rayuan adalah; (i) sama ada, berdasarkan s. 77(1) Akta Pekerjaan 1955 ('AP'), suatu rayuan ke Mahkamah Tinggi boleh wujud, sebagai perkara hak, dari satu keputusan Pejabat Buruh; dan (ii) sama ada 'Pejabat Buruh' merupakan sebuah mahkamah rendah dalam ertikata s. 28(1) AMK.

Diputuskan (membenarkan rayuan)
Oleh Nik Hashim HMR menyampaikan keputusan mahkamah:

[1] Mana-mana pihak yang terlibat yang tidak berpuashati dengan suatu keputusan pegawai buruh boleh merayu ke Mahkamah Tinggi tanpa mengira berapa jumlah yang dipertikaikan atau nilai halperkara. Kedudukan ini jelas ketara dari perkataan-perkataan s. 77(1) AP.

[2] 'Pejabat buruh' bukanlah sebuah mahkamah rendah atau mahkamah bawahan seperti yang dibayangkan oleh s. 28(1) AMK. Hanya Mahkamah Sesyen, Mahkamah Majisteret dan Mahkamah Penghulu yang ditafsirkan sebagai mahkamah rendah di bawah s. 32 Akta Mahkamah Rendah 1948. Oleh itu, rayuan dari 'pejabat buruh' ke Mahkamah Tinggi tidak dirangkum oleh rintangan-rintangn yang terkandung dalam s. 28(1) AMK.

[3] Adalah salah untuk mengkelaskan 'pejabat buruh' sebagai 'mahkamah buruh'. 'Mahkamah buruh' bukanlah sebuah mahkamah. Malah, tiada apa-apa peruntukan pun untuk 'mahkamah buruh' di dalam AP, dan penyiasatan yang dibuat oleh pegawai buruh di bawah s. 69 AP bukanlah prosiding kehakiman.

Kes dikembalikan ke Mahkamah Tinggi untuk keputusan di atas merit.]

Legislation referred to:
Courts of Judicature Act 1964, ss. 3, 28(1)
Employment Act 1955, ss. 69, 77(1)
Subordinate Courts Act 1948, s. 3(2)

For the appellant - A Ramadas; M/s Ramadas & Assoc
For the respondents - M Kulasegaran; M/s Kula & Assoc

[Appeal from High Court, Ipoh; Civil Appeal Nos: 16-10-95 & 16-11-95]

Reported by Gan Peng Chiang

JUDGMENT

Nik Hashim JCA:
This appeal concerns the construction of ss. 77 and 28 of the Employment Act 1955 ('the EA') and the Courts of Judicature Act 1964 ('the CJA') respectively.

The respondents, 208 of them, filed a joinder claim of underpayments of termination benefits with the labour office Ipoh pursuant to s. 72 of the EA. The respondents were the employees of the appellants and they were retrenched by them. The labour office registered the respondents' complaints as Kes Buruh No. 45/95, and Kes Buruh No. 46/95. At the hearing of the said complaints the two cases were consolidated. The senior labour officer made his decision on 2 October 1995 on both cases and ordered the appellants to pay the respondents a sum of RM109,454.64 in respect of Kes Buruh No. 45/95 and RM14,346.18 in respect of Kes Buruh No. 46/95. However, individually, none of the respondents was awarded exceeding RM10,000. The highest award made in one instance was at RM4,782.

Dissatisfied with the two awards, the appellants appealed to the High Court. Meanwhile, the respondents filed originating motions to strike out the appeals on the ground that the value of the subject matter of the dispute was below RM10,000 and that there were no questions of law in the matter which therefore rendered the matter not appealable by virtue of s. 28 of the CJA. On 23 August 1996 the High Court allowed the application made by the respondents to strike out the appeal lodged by the appellants. Leave to appeal against the High Court decision was granted by the Court of Appeal on 28 April 1999. Hence this appeal before us.

Principally, there are two issues for our determination:

(i) Whether the decision of the labour officer is appealable to the High Court as of right irrespective of the amount in dispute or the value of the subject matter pursuant to s. 77 of the EA.

(ii) Whether the labour office is a "subordinate court" under the CJA.

In our judgment, a party dissatisfied with a decision of the labour officer has a right of appeal to the High Court irrespective of the amount in dispute or the value of the subject matter by virtue of s. 77(1) of the EA which states:

> If any person whose financial interests are affected is dissatisfied with the decision or order of the Director General under sections 69, 69B, 69C or 73 such person may appeal to the High Court.

This section is manifestly clear that there is nothing in the said section which imposes any conditions that such a right of appeal is to be barred if the amount in dispute or the value of the subject matter is below RM10,000. The appellants had satisfied the requirements of s. 77 as they were financially affected when the labour officer ordered them to pay RM109,454.64 and RM14,346.18 to the respondents, and being dissatisfied with the said order, the appellants therefore had the right to appeal to the High Court.

With regard to the second issue, we hold that the labour office is not a "subordinate court" under the CJA. Section 28 of the CJA which deals with civil appeals from subordinate courts reads as follows:

> 28. Civil appeals from subordinate courts.
>
> (1) Subject to any other written law, no appeal shall lie to the High Court from a decision of a subordinate court in any civil cause or matter where the amount in dispute or the value of the subject-matter is ten thousand ringgit or less except on a question of law.

Under s. 3(2) of the Subordinate Courts Act 1948 (Act 92), it is clearly specified that only the following courts are termed as subordinate courts, namely:

(a) Sessions Courts;

(b) Magistrates' Courts; and

(c) in West Malaysia only, Penghulu's Courts.

Labour office is not included in the said list. Thus, the labour office is not a court.

The inquiry that was conducted by the senior labour officer in the present case is the inquiry by virtue of the powers under s. 69 of the EA given to the Director General of Labour to inquire into any dispute between an employee and his employer. It is only an inquiry and not a court proceeding. It is therefore erroneous to classify the labour office as an "inferior court" in the definition of "subordinate court" under s. 3 of the CJA or a Labour Court as it is normally called, simply because the Labour Office is not a court in the first place. Moreover, there is no provision for a Labour Court in the EA.

Accordingly, we allowed the appeal with costs to follow the event. We ordered that the case be remitted back to the High Court to be decided on merits and also ordered that the deposit be refunded to the appellant. The case was fixed for mention on 16 February 2004.